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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,204	08/31/2001	David J. Domingues	PIL0060/US	4507

33072 7590 05/01/2003

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/945,204

Applicant(s)  
Domingues

Examiner  
Lien Tran

Art Unit  
1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Feb. 11, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                              | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 6) <input type="checkbox"/> Other:  |

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1. The 112 second paragraph rejection of claims 1-18, 23 and 27 is hereby withdrawn.
2. Claims 1-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atwell et al in view of Katz et al for the same reason set forth in paragraph 6 of the previous office action and for the additional reason set forth below.

The new limitation of "an acidic active ingredient exhibits solubility behavior similar to sodium aluminum phosphate" does not define over the prior art because acidic active ingredients are the one cited in claim 37 and the leavening agents disclosed by Atwell et al includes some of the agents as cited in claim 37. If the leavening agents are the same, then the property will be the same.

3. In the response filed Feb. 11, 2003, applicant argues the cited prior art does not teach or suggest to consider solubility of an acidic agent is selecting one acidic agent from among all of those that were known to be available. This argument is not persuasive. While Atwell et al do not contain the specific wording with respect to the acidic leavening agent, they do disclose the same leavening agents claimed. Atwell et al disclose sodium aluminum phosphate, sodium aluminum sulfate, sodium acid pyrophosphate, monocalcium phosphate monohydrate, monocalcium phosphate anhydrous and dicalcium phosphate dihydrate. These are the leavening agents disclosed and claimed. If the same leavening agents are disclosed, it is obvious the solubility is the same as claimed whether or not it is disclosed. Atwell et al also disclose either or both of the leavening acid and leavening base may be encapsulated; so, they do teach the use of an encapsulated basic chemical leavening agent in combination with the relatively low solubility

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acidic agent. Applicant argues the list of leavening acids in Atwell et al includes acids that have a range of solubilities. While this might be true, applicant can not ignore the fact that Atwell also disclose the same leavening acids as in the claimed product. The disclosure of Atwell et al would have suggested to one skilled in the art various combinations including the combination of sodium aluminum sulfate with encapsulated basic agent. With respect to the Katz et al reference, applicant argues the reference fail to remedy the shortcomings of the primary reference. The Katz et al reference was only relied upon for the teaching of encapsulating material. Atwell et al already disclose the combination of low solubility acidic agent and encapsulated basic ingredient. Applicant further argues there is no disclosure of a barrier material having a solid fat index of at about 50% at 75 degree F. The specification discloses the barrier material is a hydrogenated vegetable oil including palm oil. Katz et al disclose the leavening agents are coated with hydrogenated palm oil. If the oil is the same, then it obviously has the same solid fat index as claimed. Applicant states all partially hydrogenated vegetable oils or palm oils do not have a solid fat index of at least about 50% at 75 degree F. Palm oil is the very same oil disclosed and claimed and the specification does not disclose that the oil is made or treated to have a different solid fat index.

4. Applicant's arguments filed Feb. 11, 2003 have been fully considered but they are not persuasive.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

April 30, 2003

  
LIEN TRAN  
PRIMARY EXAMINER  
C/poup1700